

PARTIES

4. Plaintiff, WANDA ATTERBERRY ("Plaintiff"), is resident of the State of Illinois, was a Cook County Sheriff's deputy and works at the Cook County Department of Corrections at its location in Chicago, Illinois.

5. Defendant, COOK COUNTY DEPARTMENT OF CORRECTIONS ("Defendant" or "CCDC"), is a county entity that employed more than twenty (20) employees and was engaged in an industry affecting commerce, thereby rendering Defendant an employer under the Americans With Disabilities Act; Defendant CALLIE L. BAIRD is the Executive Director of the CCDC and Defendant MICHAEL F. SHEAHAN is the Sheriff of Cook County.

FACTUAL ALLEGATIONS

6. Plaintiff was hired by Defendant on December 4, 1995, as a Correctional Officer.

7. Plaintiff suffers from disabling conditions that have left her with certain physical restrictions including: requiring a sedentary position, no ladder climbing, no kneeling, no crawling, no squatting, no running, and no prolonged standing.

8. Defendant was aware of Plaintiff condition and of her record of having the condition.

9. On or about December 22, 2002, Plaintiff was injured at work and was off on leave until her doctor released her to work in October 2003.

10. On or about October 16, 2003, Plaintiff reported to Defendant as ready and willing to work.

11. Plaintiff was required to see Defendant's doctor before being cleared to work and on or about October 16, 2003, Dr. Toan Leung of the Cook County Department of Human

Resources Medical Division examined Plaintiff and released her for work beginning October 17, 2003.

12. Dr. Leung's release included several restrictions including: sedentary position, no ladder climbing, no kneeling, no crawling, no squatting, no running, and no driving commercial vehicles.

13. Plaintiff was then instructed, before beginning to work, to report to the Personnel Department, which Plaintiff did on October 17, 2003.

14. Upon reporting to the Personnel Department, Plaintiff was told by the Director of Personnel, Rosemarie Nolan, that Plaintiff would not be returned to work because she had restrictions and that she could not work and would not be allowed to work until all restrictions were removed.

15. The Director of Personnel did not conduct any inquiry or examination into the particulars of Plaintiff's job duties nor did she conduct any review of Plaintiff's individual restrictions to determine if any positions were available that Plaintiff could do with her restrictions.

16. On or about October 31, 2003, Plaintiff returned to the Director of Personnel and insisted that she was entitled to work under the Americans with Disabilities Act and requested that she be returned to work.

17. In that meeting, the Director of Personnel intentionally lied to Plaintiff in an effort to get her to drop her request by telling Plaintiff that she had no rights under the ADA and that the ADA did not apply to Cook County employees.

18. On or about November 3, 2003, Plaintiff submitted a formal written request to the Director of Personnel for work accommodations and the opportunity to return to work.

19. As of November 19, 2003, Plaintiff had not received a response from the Director of Personnel and was repeatedly refused an opportunity to meet and speak with the Director.

20. Plaintiff then filed a Charge of Discrimination with the EEOC on November 19, 2003, claiming disability discrimination; see Exhibit A.

21. On or about December 11, 2003, Plaintiff was then contacted by the Personnel Department and instructed to return to Defendant's doctor for another evaluation.

22. Plaintiff reported as instructed and on December 11, 2003, after conducting a fitness for duty evaluation, Dr. Linda Lee determined that Plaintiff could return to work with the following restrictions: "sedentary position, no ladder climbing, no kneeling, no crawling, no squatting, no running, no prolonged standing. As per the American Disabilities Act."

23. On December 11, 2003, Plaintiff again reported to the Director of Personnel who again refused to return Plaintiff to work despite the doctor's release.

24. Plaintiff informed her union about the refusal to return her to work and on or about December 22, 2003, Plaintiff was called for a meeting with her union representative, the union attorney and the Director of Personnel, Ms. Nolan.

25. At the conclusion of the meeting, Ms. Nolan signed a release for duty authorization and Plaintiff reported for work and in fact worked a scheduled shift that evening, December 22, 2003 and continued to report to work regularly and perform assignments as instructed thereafter.

26. During the course of her employment with Defendant, Plaintiff fully performed the duties assigned to her in a competent and satisfactory manner and was fully able to perform the essential functions of her job with reasonable accommodation.

27. On December 29, 2003, Plaintiff was then called in to the Internal Affairs Division was stripped of her credentials and was de-deputized.

28. Defendant claimed that Plaintiff was de-deputized for being off on a work related injury in excess of six months.

29. Defendant gave no explanation as to why this was not done after the first six months of her leave rather than two months after she had been released to return to work and a week after she had been allowed to continued her duties at the jail.

30. Defendant also claimed that Plaintiff was being de-deputized for failing a mandatory drug screen even though Plaintiff was taking the medication under a doctor's prescription for her disability and even though she had submitted a pre-screen affidavit listing the item.

31. When Defendant failed to correct the situation, Plaintiff filed another Charge of Discrimination, for retaliation, with the EEOC on January 6, 2004; see Exhibit C.

32. Thereafter, on or about March 26, 2004, Defendant prepared a formal Disciplinary Action Form against Plaintiff, recommending 29 days off without pay, for inadvertently having a cell phone on duty, an incident which had occurred approximately 16 months earlier.

33. Plaintiff continues to be employed by Defendant but is working without her credentials and is not deputized, which has resulted in a loss of seniority, detrimentally effected her ability to get preferential assignments and shifts and which adversely effects her ability for career advancement and promotions.

34. By the acts and conduct described above, Defendant intended to cause and did cause Plaintiff emotional distress, or acted in reckless disregard that their actions would cause Plaintiff such injury.

35. Plaintiff suffered emotional distress as a direct and proximate result of Defendant's conduct.

36. Plaintiff has lost wages and other benefits, has suffered embarrassment and humiliation, has suffered loss of enjoyment of life, inconvenience and non-pecuniary losses and her career has been damaged as a result of Defendant's conduct.

COUNT I
DISCRIMINATION IN VIOLATION OF THE
AMERICANS WITH DISABILITIES ACT

37. Plaintiff re-alleges paragraphs 1 through 36 and incorporates them as if fully set forth herein.

38. Title I of the Americans With Disabilities Act makes it unlawful for an employer to discriminate against an employee on the basis of an employee's disability, because of a record of disability or because the employer regards the employee as suffering from a disability.

39. By its conduct as alleged herein, Defendant discriminated against Plaintiff in violation of the ADA.

40. Defendant's conduct toward Plaintiff illustrated a willful and/or reckless disregard of Plaintiff's right to be free from impermissible disability discrimination.

41. Plaintiff demands to exercise her right to a jury trial of this matter.

COUNT II
**FAILURE TO ACCOMMODATE IN VIOLATION OF THE
AMERICANS WITH DISABILITIES ACT**

42. Plaintiff re-alleges paragraphs 1 through 36 and incorporates them as if fully set forth herein.

43. Title I of the Americans With Disabilities Act makes it unlawful for an employer to fail to accommodate and employee's disability.

44. By its conduct as alleged herein, Defendant failed to accommodate Plaintiff's disability by refusing to return her to work between October 17, 2003 and December 22, 2003.

45. Defendant's conduct toward Plaintiff illustrated a willful and/or reckless disregard of Plaintiff's right to be free from impermissible disability discrimination.

46. Plaintiff demands to exercise her right to a jury trial of this matter.

COUNT III
**RETALIATION IN VIOLATION OF THE
AMERICANS WITH DISABILITIES ACT**

47. Plaintiff re-alleges paragraphs 1 through 36 and incorporates them as if fully set forth herein.

48. Title I of the Americans With Disabilities Act, specifically 42 U.S.C. §12203 makes it unlawful for an employer to retaliate against any employee who has opposed and unlawful employment practice.

49. By its conduct as alleged herein, Defendant retaliated against Plaintiff for asserting her rights under the ADA.

50. Defendant's actions toward Plaintiff illustrated a willful and/or reckless disregard of Plaintiff's right to be free from impermissible retaliatory conduct.

51. Plaintiff demands to exercise her right to a jury trial of this matter.

RELIEF REQUESTED

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in her favor and against Defendant on Counts I, II and III and that it:

- a. Declare that Defendant's conduct constitutes unlawful discrimination in violation of the Americans With Disabilities Act;
- b. Declare that Defendant's conduct constitutes unlawful failure to accommodate in violation of the Americans With Disabilities Act;
- c. Declare that Defendant's conduct constitutes unlawful retaliation in violation of the Americans With Disabilities Act;
- d. Award Plaintiff the value of all compensation lost and benefits lost as a result of Defendant's unlawful conduct;
- e. Award Plaintiff the value of compensation and benefits she will lose in the future as a result of Defendant's unlawful conduct;
- f. Award Plaintiff damages for emotional distress and compensatory damages;
- g. Award Plaintiff punitive damages;
- h. Award Plaintiff reasonable attorney's fees, costs and disbursements; and
- i. Award Plaintiff any and all other relief as the Court deems just in the premises.

Respectfully submitted,


Counsel for Plaintiff

M. Megan O'Malley
John P. Madden
O'Malley & Madden, P.C.
542 S. Dearborn Street
Suite 660
Chicago, Illinois 60605
312.697.1382

EEOC Form 5 (5/01)

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To:

Agency(ies) Charge No(s):

☐ FEPA☒ EEOC

210-2004-01037

Illinois Department Of Human Rights

and EEOC

State or local Agency, if any

Name (Indicate Mr., Ms., Mrs.)

Wanda Atterberry

Home Phone No. (incl Area Code)

(773) 454-2575

Date of Birth

Street Address

City, State and ZIP Code

7954 S. Vernon, Chicago, IL 60619

Named Is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)

Name

COOK COUNTY DEPT OF CORRECTIONS

No. Employees, Members

500 or More

Phone No. (Include Area Code)

(773) 869-7100

Street Address

City, State and ZIP Code

2800 S. Sacramento Ave., Chicago, IL 60608

Name

No. Employees, Members

Phone No. (Include Area Code)

Street Address

City, State and ZIP Code

DISCRIMINATION BASED ON (Check appropriate box(es).)

☐ RACE ☐ COLOR ☐ SEX ☐ RELIGION ☐ NATIONAL ORIGIN
☐ RETALIATION ☐ AGE ☒ DISABILITY ☐ OTHER (Specify below.)

DATE(S) DISCRIMINATION TOOK PLACE

Earliest

Latest

10-17-2003**11-19-2003**☐ CONTINUING ACTION

PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):

I have been employed with the Respondent since December 4, 1995 as a Correctional Officer. Respondent is aware of my disability. From December 22, 2002 until October 17, 2003, I was on worker's compensation leave. On October 17, 2003, I was released to return to work with restrictions. I provided the restrictions to the Director of Personnel but was denied a reasonable accommodation.

I believe that I have been discriminated against on the basis of my disability in violation of the Americans with Disabilities Act of 1990.

RECEIVED EEOC
NOV 19 2003
CHICAGO DISTRICT OFFICE

want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the above is true and correct.

NOTARY - When necessary for State and Local Agency Requirements

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DAY
(month, day, year)

Nov 19, 2003

Date

Charging Party Signature

PLAINTIFF'S
EXHIBIT

A

Equal Employment Opportunity Commission

DISMISSAL AND NOTICE OF RIGHTS

To: CERTIFIED MAIL NO.: 7099-3400-0014-4047-8084 C/P

From:

Wanda Atterberry
7954 South Vernon
Chicago, Illinois 60619

Equal Employment Opportunity Commission
Chicago District Office
500 West Madison Street, Suite 2800
Chicago, Illinois 60661-2511

☐ On behalf of a person aggrieved whose identity is
CONFIDENTIAL (29 CFR § 1601.7(a))

Charge No.

210-2004-01037

EEOC Representative

Ms. Patricia Jaramillo, Enforcement Supervisor

Telephone No.

(312) 886-3576

(See the additional information attached to this form.)

YOUR CHARGE IS DISMISSED FOR THE FOLLOWING REASON:

- ☐ The facts you allege fail to state a claim under any of the statutes enforced by the Commission
- ☐ Respondent employs less than the required number of employees.
- ☐ Your charge was not timely filed with the Commission, i.e., you waited too long after the date(s) of the discrimination you alleged to file your charge. Because it was filed outside the time limit prescribed by law, the Commission cannot investigate your allegations.
- ☐ You failed to provide requested information, failed or refused to appear or to be available for necessary interviews/conferences, or otherwise refused to cooperate to the extent that the Commission has been unable to resolve your charge. You have had more than 30 days in which to respond to our final written request.
- ☐ The Commission has made reasonable efforts to locate you and has been unable to do so. You have had at least 30 days in which to respond to a notice sent to your last known address.
- ☐ The respondent has made a reasonable settlement offer which affords full relief for the harm you alleged. At least 30 days have expired since you received actual notice of this settlement offer.
- ☒ The Commission issues the following determination: Based upon the Commission's investigation, the Commission is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.
- ☐ Other (briefly state) _____

- NOTICE OF SUIT RIGHTS -

- ☒ Title VII and/or the Americans with Disabilities Act: This is your NOTICE OF RIGHT TO SUE, which terminates the Commission's processing of your charge. If you want to pursue your charge further, you have the right to sue the respondent(s) named in your charge in a court of competent jurisdiction. If you decide to sue, you must sue WITHIN 90 DAYS from your receipt of this Notice; otherwise your right to sue is lost.
- ☐ Age discrimination in Employment Act: This is your NOTICE OF DISMISSAL OR TERMINATION, which terminates processing of your charge. If you want to pursue your charge further, you have the right to sue the respondent(s) named in your charge in a court of competent jurisdiction. If you decide to sue, you must sue WITHIN 90 DAYS from your receipt of this Notice; otherwise your right to sue is lost.
- ☐ Equal Pay Act (EPA): EPA suits must be brought within 2 years (3 years for willful violations) of the alleged EPA underpayment.

On behalf of the Commission

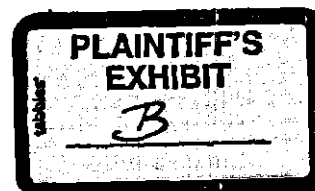
John P. Rowe
John P. Rowe, District Director

Enclosures

Information Sheet
Copy of Charge

cc: Respondent(s)

Cook County Department of Corrections



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Agency(ies) Charge No(s):

☐ FEPA
☒ EEOC

210-2004-01962

Illinois Department Of Human Rights

and EEOC

Name (Indicate Mr., Ms., Mrs.)

Ms. Wanda Atterberry

Home Phone No. (incl Area Code)

(773) 783-6207

Date of Birth

Street Address

7954 S. Vernon, Chicago, IL 60619

City, State and ZIP Code

Named Is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)

Name

COOK COUNTY CORRECTIONS

No. Employees, Members

500 or More

Phone No. (Include Area Code)

(312) 890-6843

Street Address

2600 S California, Chicago, IL 60608

City, State and ZIP Code

Name

No. Employees, Members

Phone No. (Include Area Code)

Street Address

City, State and ZIP Code

DISCRIMINATION BASED ON (Check appropriate box(es).)

☐ RACE ☐ COLOR ☐ SEX ☐ RELIGION ☐ NATIONAL ORIGIN
☒ RETALIATION ☐ AGE ☐ DISABILITY ☐ OTHER (Specify below.)

DATE(S) DISCRIMINATION TOOK PLACE

Earliest

Latest

12-29-2003

01-06-2004

☐ CONTINUING ACTION

PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)).

I. I was hired by the Respondent on December 4, 1995, as a Correctional Officer. On November 19, 2003, I filed EEOC Charge #210-2004-01037. On December 29, 2003, I was de-deputized.

II. I believe I have been retaliated against in violation of the American with Disabilities Act of 1990.

RECEIVED EEOC

JAN 6 2004

CHICAGO DISTRICT OFFICE

want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the above is true and correct.

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I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

Jan 06, 2004

Date

Charging Party Signature

SUBSCRIBED AND SWORN TO BEFORE ME THIS (month, day, year)

**PLAINTIFF'S
EXHIBIT**

Equal Employment Opportunity Commission

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Ms. Patricia Jaramillo, Enforcement Supervisor

Telephone No.

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- [] Respondent employs less than the required number of employees.
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- [] You failed to provide requested information, failed or refused to appear or to be available for necessary interviews/conferences, or otherwise refused to cooperate to the extent that the Commission has been unable to resolve your charge. You have had more than 30 days in which to respond to our final written request.
- [] The Commission has made reasonable efforts to locate you and has been unable to do so. You have had at least 30 days in which to respond to a notice sent to your last known address.
- [] The respondent has made a reasonable settlement offer which affords full relief for the harm you alleged. At least 30 days have expired since you received actual notice of this settlement offer.
- [x] The Commission issues the following determination: Based upon the Commission's investigation, the Commission is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.
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On behalf of the Commission

John P. Rowe
John P. Rowe, District Director

February 11, 2004

Enclosures

Information Sheet

Copy of Charge

cc: Respondent(s)

Cook County Department of Corrections



EEOC Form 161 (Text 5/95)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

Civil Cover Sheet

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the Northern District of Illinois.

Plaintiff(s): Wanda Atterberry

Defendant(s): Cook County Department of
Corrections et al.

County of Residence:

County of Residence:

Plaintiff's Atty: John P. Madden
O'Malley & Madden, P.C.
542 S. Dearborn Street, Suite
660, Chicago, IL 60605
312-697-1382

Defendant's Atty:

JUDGE ZAGEL

04C 3340

II. Basis of Jurisdiction:

3. Federal Question (U.S. not a party)

MAGISTRATE JUDGE NOLAN

III. Citizenship of Principal
Parties (Diversity Cases Only)

Plaintiff:- N/A
Defendant:- N/A

IV. Origin :

1. Original Proceeding

V. Nature of Suit:

442 Employment

VI. Cause of Action:

Discrimination based on disability and retaliation, 42 U.S.C. 12101
et seq.

VII. Requested in Complaint

Class Action: No
Dollar Demand:
Jury Demand: Yes

VIII. This case **IS NOT** a refiling of a previously dismissed case.

Signature:

Date:

If any of this information is incorrect, please go back to the Civil Cover Sheet Input form using the *Back* button in your browser and change it.
Once correct, print this form, sign and date it and submit it with your new civil action. **Note: You may need to adjust the font size**

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS**

EASTERN DIVISION

In the Matter of

Wanda Atterberry

v.

Cook County Department of Corrections et al.

JUDGE ZAGEL

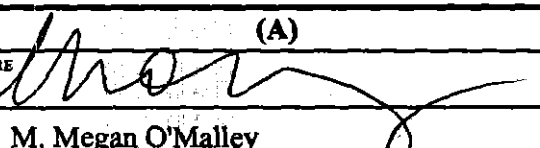
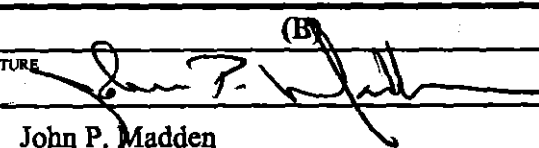
Case Number:

04C 3340

APPEARANCES ARE HEREBY FILED BY THE UNDERSIGNED AS ATTORNEY(S) FOR:

Plaintiff

MAGISTRATE JUDGE NOLAN

(A)		(B)	
SIGNATURE 		SIGNATURE 	
NAME M. Megan O'Malley		NAME John P. Madden	
FIRM O'Malley & Madden, P.C.		FIRM O'Malley & Madden, P.C.	
STREET ADDRESS 542 S. Dearborn Street, Suite 660		STREET ADDRESS 542 S. Dearborn Street, Suite 660	
CITY/STATE/ZIP Chicago, Illinois 60605		CITY/STATE/ZIP Chicago, Illinois 60605	
TELEPHONE NUMBER 312.697.1382	FAX NUMBER 312.697.1384	TELEPHONE NUMBER 312.697.1382	FAX NUMBER 312.697.1384
E-MAIL ADDRESS		E-MAIL ADDRESS	
IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE) 6243598		IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE) 6243400	
MEMBER OF TRIAL BAR? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>		MEMBER OF TRIAL BAR? YES <input type="checkbox"/> NO <input type="checkbox"/>	
TRIAL ATTORNEY? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>		TRIAL ATTORNEY? YES <input type="checkbox"/> NO <input type="checkbox"/>	
		DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input type="checkbox"/>	
(C)		(D)	
SIGNATURE		SIGNATURE	
NAME		NAME	
FIRM		FIRM	
STREET ADDRESS		STREET ADDRESS	
CITY/STATE/ZIP		CITY/STATE/ZIP	
TELEPHONE NUMBER	FAX NUMBER	TELEPHONE NUMBER	FAX NUMBER
E-MAIL ADDRESS		E-MAIL ADDRESS	
IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE)		IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE)	
MEMBER OF TRIAL BAR? YES <input type="checkbox"/> NO <input type="checkbox"/>		MEMBER OF TRIAL BAR? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	
TRIAL ATTORNEY? YES <input type="checkbox"/> NO <input type="checkbox"/>		TRIAL ATTORNEY? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	
DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input type="checkbox"/>		DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input type="checkbox"/>	

DOCKETED
MAY 12 2004

FILED-ED4
CLERK
U.S. DISTRICT COURT
MAY 11 2004